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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/238,535	01/27/1999	ROBERT LINLEY MUIR	2663/FBR	6165

7590 02/27/2002

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EXAMINER

BROCKETTI, JULIE K

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/238,535

Applicant(s)

MUIR, ROBERT LINLEY

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the restriction in Paper No. 5 is acknowledged. The traversal is on the ground(s) that group I (claims 1-8, 11 and 12) and group II (claims 9, 10, 13-18) do not represent distinct inventions and would not impose an undue burden on the examiner. This is not found persuasive because the instant case contains a combination/subcombination wherein the combination as claimed does not require the particulars of the subcombination as claimed because the distributed gaming system does not require the specific gaming console or electronic gaming machines described in group I. The subcombination has separate utility such as use as a gaming console or gaming machine separate from a distributed gaming system not requiring the use of a server.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9, 10 and 13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 9, 10

and 13 claim the limitation of “platform code”. “Code”, i.e. software or a computer program, is descriptive material *per se* and is not statutory because it is not capable of causing functional change in the computer. See *e.g.*, *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760. See MPEP 2106 IV (B).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9, 10 and 13-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 9 states “platform code for executing the at least one of the functional modules.” Claim 10 states “for execution by the consoles’ platform code.” Claim 13 states “platform code located in the server adapted to separate...” Platform code cannot execute nor separate anything. A computer must be involved performing the execution of the code. This is not clear in the claims and therefore they are not enabled.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-16 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 states "a combination module". This is unclear. It is not understood if the combination is a mixture of many modules or if the combination is the various game outcomes that can occur.

Claim 15 states "wherein the server stores a plurality of functional modules for the same function for one or more of the games." It is unclear as to what is meant by the phrase "for the same function".

Claims 16 and 18 state, "...wherein the function is a currency symbol". The word "function" implies an action. A currency symbol is not an action; consequently, the phrase above as written is confusing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarr et al., U.S. Patent No. 5,935,004 in view of Acres, U.S. Patent No. 6,319,125 B1. Tarr et al. discloses a distributed gaming system.

The system uses a server and a game platform interface (See Tarr et al. Fig. 1). A plurality of games are stored on the server and are arranged to interact only via the platform interface (See Tarr et al. col. 5 lines 55-60; col. 6 lines 41-47). The system uses a plurality of consoles (Fig. 1). It is inherent that each console includes platform code for executing the software programs. Platform code is also located in the server in order to separate the game software programs and for transferring the programs to a console. The server stores the software and files that perform the same functions for the games (See Tarr et al. col. 6 lines 53-61). Tarr et al. lacks in specifically disclosing separating the game software into separate functional modules.

Acres teaches of a gaming device in which the software controlling the device is broken up into various functional modules. Each module consists of one or more procedures or functions. Programs are broken up into modules when they address more than one issue. The modules cover a wide variety of areas including game play, graphics and audio. The game outcome or bonus outcome is stored in a module. It would have been obvious at the time the invention was made to store the game outcome on a server so that it would be more difficult for a player to tamper with and change the selected game outcome. By having the outcome stored on a server, more security is provided to the system. The graphics/audio files or other functional module is distributed to one or more consoles for execution by the computer system in the console. Acres teaches of credit and jackpot modules. Both of these areas

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deal with money; consequently, it would have been obvious to display a currency symbol to a player in order for the player to easily determine how much money they are betting or winning (See Acres col. 51 lines 2-63). It would have been obvious at the time the invention was made to separate the software programs in the invention of Tarr et al. into a plurality of functional modules. To easily understand and alter programs they must be broken up into small components such as modules. This helps the software designer change and fix problems with the program more easily. If a long program was written, they demand a high level of concentration and areas of unrelated levels of concern must be separated. Good programming style uses modules, which are easier to change, fix and replace.

Citation of Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. The Electrical Engineering Handbook.

--The Electrical Engineering Handbook clearly shows that the use of modules is well known throughout the art of computer programming.

Conclusion

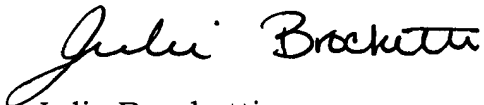
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone

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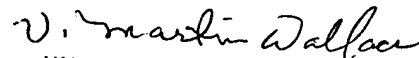
number is 703-308-7306. The examiner can normally be reached on M-F 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 703-306-5648.



Julie Brockett
February 20, 2002



VALENCIA MARTIN-WALLACE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700